

United States Court of Appeals

District of Columbia Circuit

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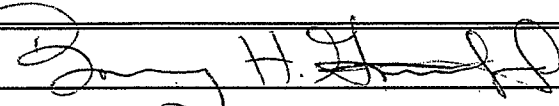
DOCKETING STATEMENT

Administrative Agency Review Proceedings
(To be completed by appellant/petitioner)

DEC 16 2002

GENERAL COUNSEL
OF COPYRIGHT

1. CASE NO. 02-1244 2. DATE DOCKETED August 7, 2002
3. CASE NAME
(lead parties only) IOMedia Partners, Inc. v. Librarian of Congress (Copyright Office)
4. TYPE OF CASE: ☐ Review ☒ Appeal ☐ Enforcement ☐ Complaint ☐ Tax Court
5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? YES ☐ NO ☒ X
If YES, cite statute: _____
6. CASE INFORMATION:
- a. Identify agency whose order is to be reviewed: Librarian of Congress
- b. Give agency docket or order number(s): 67 Fed. Reg. 45240
- c. Give date(s) of order(s): July 8, 2002
- d. Has a request for rehearing or reconsideration been filed at the agency? YES ☐ NO ☒ X
If so, when was it filed? _____ By whom? _____
Has the agency acted? YES ☐ NO ☐ If so, when? _____
- e. Are any other cases involving the same underlying agency order pending in this Court or in any other Court?
YES ☒ X NO ☐ If YES, identify case name(s), docket number(s), and court(s):
AOL v. Librarian (02-1245), RIAA v. Librarian (02-1246), AFMUS v. Librarian (02-1247)
AFTRA v. Librarian (02-1248), Salem Communications Corp. v. Librarian (02-1249)
Intercollegiate Broadcasting Systems v. Librarian (02-1220)
- f. Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve *substantially the same issues* as the instant case presents?
YES ☒ X NO ☐ If YES, give case name(s) and number(s) of these cases and identify court/agency:
See 6e
- g. Have the parties attempted to resolve the issues in this case through arbitration, mediation, or any other alternative for dispute resolution? YES ☐ NO ☒ X If so, provide the name of the program and the dates of participation. _____

Signature  Date _____

Name of Party (Print) IOMedia Partners, Inc. and all other appellants in 02-1244 (as originally filed)

Name of Counsel for Appellant/Petitioner (Print) Barry H. Gottfried Firm Shaw Pittman LLP

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ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 10 days by letter, with copies to all other parties, specifically referring to the challenged statement. An original and three copies of such letter should be submitted.

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of September, 2002, the foregoing Docketing

Statement was served by U.S. mail, postage prepaid, on the following:

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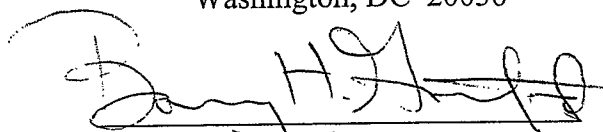
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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

RECEIVED

DEC 16 2002

GENERAL COUNSEL
OF COPYRIGHT

IOMEDIA PARTNERS, INC., et al.,

Appellants,

v.

UNITED STATES COPYRIGHT OFFICE,
LIBRARY OF CONGRESS,

Appellee.

No. 02-1244 (Consolidated with Nos.
02-1245, 02-1246, 02-1247, 02-1248,
and 02-1249)

NON-BINDING STATEMENT OF THE ISSUES

Pursuant to the Court's Order of August 9, 2002, the Appellants, IOMedia Partners, Inc., Beethoven.com LLC, Chatmaster Streaming Network, ClassicalMusicDetroit.com, Digitally Imported Radio, Flaresound, iM Networks, Inetprogramming Incorporated, Internet Radio Hawaii, Internet Radio, Inc., Live365.com, Inc., Pacific Internet Broadcast Services, Radio Paradise, SomaFM, LLC, Ultimate-80s, Virgin Audio Holdings, LLC, Wherever Radio, Wolf FM, 3WK, Inc., ("Appellants") presently expect all or many of the following issues to be raised in the above-captioned matter:

- (1) Whether Section 114(f) of the Copyright Act, 17 U.S.C. § 114, violates the First Amendment to the U.S. Constitution by discriminating against eligible non-subscription services as against other statutory licensees.
- (2) Whether the Librarian of Congress (Copyright Office) (the "Librarian") acted in an arbitrary manner in setting the rates and terms for two compulsory licenses that permit certain digital performances of sound recordings and the making of

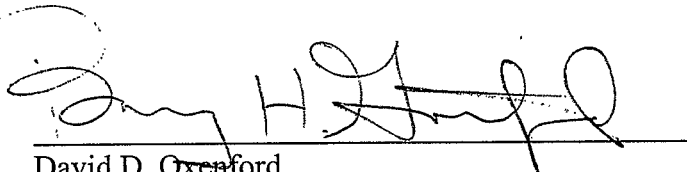
ephemeral recordings in the Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings; Final Rule, 67 Fed. Reg. 45240 (July 8, 2002) (to be codified at 37 C.F.R. pt. 261) ("Final Order").

- (3) Whether the Final Order violated the First and Fifth Amendments to the U.S. Constitution by setting confiscatory rates for the Appellants.
- (4) Whether the proceeding and Final Order violated the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. § 501 et seq., by making it virtually impossible for small businesses to participate effectively.
- (5) Whether the Librarian violated the Constitution and statutes of the United States by excluding, in practical effect, participation in the proceeding by many of the Appellants that are bound by the prescribed rates.
- (6) Whether the rates determined for the Appellants were unsupported by substantial evidence, especially given that the record contained virtually no evidence concerning many of the Appellants, and the evidence adduced did not support the rates adopted.
- (7) Whether the Librarian acted in an arbitrary manner and contrary to law in determining the rates prescribed for the Appellants – which are confiscatory and utterly disproportionate to their ability to pay – by adopting rates that were contrary to the intent of Congress as reflected in the statutory standard.
- (8) Whether the Librarian acted contrary to Congressional intent by setting confiscatory rates that are utterly disproportionate to small webcasters' ability to pay.

- (9) Whether the prescription of the interim method of estimation of rates payable for the period October 28, 1998 through December 31, 2002, was arbitrary in calling for data that was generally unavailable to the Appellants.

DATED: September 9, 2002

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David D. Oxenford", written over a horizontal line.

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Counsel for Appellants

Document #: 1270944 v.1

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of September, 2002, the foregoing Non-Binding Statement of the Issues was served by U.S. mail, postage prepaid, on the following:

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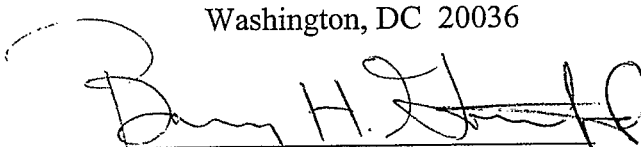
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